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Error to Circuit Court, Dickenson County.

Action by William and Nicy Belcher, his wife, for, etc., against John M. Skeen and others, resulting in verdicts and judgments for plaintiffs in two of the three actions, and defendants moved in arrest of judgment, to set aside the verdicts and to grant new trials, which motions were overruled, and defendant Skeen brings error. Reversed and remanded.

Chase & McCoy and *A. A. Skeen*, all of Clintwood, for plaintiff in error.

S. H. & Geo. C. Sutherland, of Clintwood, for defendants in error.

PECHIN et al. v. PORTERFIELD et al.

Sept. 16, 1920.

[104 S. E. 695.]

1. Judicial Sales (§ 52*)—Ordinarily There Is no Abatement for Deficiency in Quantity.—It is a general rule that an increase or abatement of the purchase price of land sold at a judicial sale will not be permitted for excess or deficiency in quantity after confirmation of such sale, whether the deficiency results from a defect in title or a shortage in acreage, unless there be after-discovered fraud, misrepresentation, or mutual mistake.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 753, 764.]

2. Judicial Sales (§ 52*)—Abatement for Deficiency in Quantity Held Proper.—Where the court on confirming a judicial sale of a decedent's land made reservation to hold open the rights of the parties if the boundary should fall short, their being conflicting claims as to some land claimed to be included, and it appeared that both parties and the court were mistaken as to the actual acreage of the tract, and decedent's wife and devisee stated to the commissioners, who made it public, that she supposed the tract, which contained a little more than 200 acres, contained 300 acres, the purchaser should be allowed an abatement.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 753, 764.]

3. Judicial Sales (§ 52*)—Rights against a Former Grantor Will Not Be Adjudicated on Application by Purchaser for Abatement for Deficiency.—Where the land of a decedent was judicially sold on creditor's bill brought by the grantor, who had not been paid, and it developed the land did not contain the acreage which the decedent's wife and devisee represented it to contain, so that under the circum-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

stances the purchaser was entitled to an abatement, the question of the rights of the estate against the decedent's grantor will not be determined on petition by the purchaser for such an abatement.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 751, et seq., 766.]

Appeal from Circuit Court, Smyth County.

Creditors' suit by Mrs. Mary F. Carter against Charles Dale Carter's executor and others, in which T. B. Porterfield and another as assignees of J. S. Pechin and another, purchasers of land sold under decree in such suit, filed a petition for abatement of purchase price. From the decree granting such relief, said Pechin and another appeal. Affirmed.

W. S. Poage, of Wytheville, and *Perkins & Moncure*, of Marion, for appellants.

Hutton & Hutton and *Jno. J. Stuart*, all of Abingdon, for appellees.

ROBERTS *v.* SCYPHERS et al.

Sept. 16, 1920.

[104 S. E. 698.]

1. Wills (§ 440*)—Intent of Testator as Gathered from Language Governs.—Effect should be given to the intention of the testator as gathered from the language of his will, provided the devise or bequest is not forbidden by law, and such intention, when adequately expressed in his will, overrides all other rules of interpretation.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780.]

2. Wills (§ 635*)—After-Born Children Entitled to Take under Remainder to Children.—Where testatrix devised land to her nephew, and at his death to go to his children equally, children of the nephew and a second wife born after the death of the testatrix are entitled to share, the testatrix having stood in loco parentis to her nephew, and the gift being for all, so, while the remainder vested on death of the testatrix in those children of the nephew then born, it would open to let in after-born children.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 826, et seq., 13 Va.-W. Va. Enc. Dig. 817, et seq.]

Appeal from Circuit Court, Washington County.

Suit between one Roberts and one Scyphers and another. From a decree for the latter, the former appeals. Modified and affirmed.

Irby Hurt, of Abingdon, for appellant.

Jno. W. Neal, of Abingdon, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.